

1 BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 IMPARTIAL HEARING OFFICER

4 * * * * *

5 IN THE MATTER OF S.S.

)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER

7
)
) OSPI 90-03
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10 **Introductory Statement**

11 Pursuant to the Education for All Handicapped Children's Act,
12 20 U.S.C. Section 1400, et seq., 34 Code of Federal Regulations
13 300, Title 20, Montana Codes Annotated and 10.6.101 et seq.,
14 Administrative Rules of Montana, S.S. (hereinafter **Petitioner**),
15 through his mother, appeals a decision of the Missoula Elementary
16 School District No. 1, Missoula County, Child Study and Individual
17 Education Plan Teams' designation of Petitioner's handicapping
18 condition of "mental retardation."

19 Both parties had an opportunity to strike and prioritize a
20 list of five potential Hearing Officers provided by the Montana
21 Office of Public Instruction. Subsequently, State Superintendent
22 Nancy Keenan appointed the undersigned as Hearing Officer in this
23 matter.

24 Both parties waived the 45-day time limit in which a decision
25 would be rendered on this appeal. This Hearing Officer conducted
a prehearing conference, requested and received pleadings, admitted

1 testimonial and documentation evidence and other matters, and has
2 established the **record** as defined by Rule 10.6.118, A.R.M.

3 A hearing was conducted on June 6, 1990. The hearing was
4 transcribed. Missoula Elementary School District (**Respondent**) was
5 represented by the Deputy County Attorney, Missoula, Montana.
6 Petitioner represented the interests of her child and acted pro se
7 through these proceedings. A transcript of the hearing was made
8 and provided to this Hearing Officer prior to the entering of these
9 findings and conclusions. Proposed Findings of Fact and
10 Conclusions of Law were requested and submitted by the parties.

11 Having reviewed the record in this matter, and after
12 consideration of all evidence, briefs, pleadings and applicable
13 law, this Hearing Officer is prepared and does enter these:

14 **FINDINGS OF FACT**

15 1. Petitioner was born on August 28, 1983. At the time of
16 this appeal, Petitioner was six years of age and a resident of the
17 Missoula Elementary School District No. 1, Missoula County, State
18 of Montana.

19 2. Respondent, Missoula Elementary School District No. 1 is
20 a public school district organized and operating under the laws of
21 the State of Montana. By law, Respondent School District provides
22 educational services to eligible school age children (kindergarten
23 through the eighth grade) and is responsible for providing
24 educational services to Petitioner.

25 3. Petitioner has been an enrolled pupil of Respondent
School District since he entered the Hawthorne School pre-school

1 program on September 1, 1986, as a non-categorical handicapped
2 student.

3 4. On January 24, 1990, Respondent School District convened
4 a child study team to determine Petitioner's handicapping
5 condition, if any. The child study team's recommendation was that
6 Petitioner's handicapping condition be designated as "speech
7 impaired" and "mental retardation." Subsequently, an individual
8 education plan team was convened to determine and prepare an
9 appropriate individual education plan.

10 5. Petitioner's mother took issue with the label of "mental
11 retardation." Petitioner's primary disagreement was with the child
12 study team's labeling of Petitioner as "mentally retarded."
13 Petitioner elected not to sign the child study team report
14 containing that designation. Petitioner did approve of "speech
15 impaired" as a label to be used by Respondent School District, if
16 it was required to determine a classification for his handicapping
17 condition.

18 6. Petitioner's mother subsequently submitted a minority
19 report and sent a letter to the Montana Office of Public
20 Instruction requesting a due process hearing concerning the use of
21 the "mental retardation" label on her son.

22 7. Petitioner's mother admits that Petitioner is currently
23 receiving an "appropriate education" as defined under the Education
24 for All Handicapped Children's Act. Petitioner's mother does not
25 dispute Petitioner's placement, the appropriateness of the
placement, nor the educational or related services provided to her

1 son as identified in the individual education plan.

2 8. Petitioner alleges that the use of the "mental
3 retardation" category as a handicapping condition identification
4 is violative of the Education for All Handicapped Children's Act,
5 20 U.S.C., Section 1400, et seq., and the Montana and Federal
6 Constitutional right to privacy provisions.

7 9. Respondent School District designates the handicapping
8 condition or conditions of each pupil served by special education
9 services. These designations are found in 20 U.S.C., 1401 and
10 Section 20-7-401, MCA. Montana's definitions are substantially
11 identical to the definitions of handicapping conditions used in
12 federal law. Once a student has been designated with a particular
13 handicapping condition, such designation is subject to periodic
14 review within the school district and by federal and state
15 authorities. The evidence submitted to this Hearing Officer
16 regarding Petitioner's designation indicates the designation had
17 no direct bearing on the decisions involved in the development of
18 the child's individual education plan beyond establishing that the
19 child is, in fact, entitled to special education services.

20 10. Petitioner contends the use of categorization and
21 labeling carries with it a stigmatism which will result in an
22 educational program being overly narrow and rigid because the
23 education professionals, certified and non-certified school
24 personnel, would identify the pupil as being that disability rather
25 than having that disability. Further, Petitioner argues that a
label has a different connotation for different people and may

1 result in Petitioner's son being considered to have educational
2 needs in common with other pupils similarly identified or labeled,
3 rather than considering his specialized or individualized needs.

4 11. Petitioner contends that noncategorical labeling and
5 classification is necessary to carry out the constitutional rights
6 of individual dignity and individual privacy, and to further the
7 purposes and requirements of the federal and state special
8 education provisions. Petitioner claims that the label "mentally
9 retarded" does violate her son's individual dignity, privacy and
10 perpetuates a stigmatizing classification which denies him an equal
11 educational opportunity.

12 12. Respondent School District obtains substantial funds from
13 the Montana Office of Public Instruction for special education
14 purposes. Such funds are received by complying with state and
15 federal requirements.

16 13. The Montana Office of Public Instruction requires that
17 Respondent School District report the number of children served by
18 the school district's special education program and the designated
19 handicapping condition of each child served. This information is
20 provided to the Montana Office of Public Instruction with only the
21 initials of the child and a date of birth as identifiers, and is
22 kept confidential by the State.

23 14. The Montana Office of Public Instruction receives
24 substantial federal funding for special education services, in
25 excess of five million dollars per year. To receive these funding
sources, the Montana Office of Public Instruction is required to

1 submit to the federal government (United States Department of
2 Education), reports showing the number of children served and their
3 handicapping conditions.

4 15. Although Petitioner alleges stigmatization and denial of
5 appropriate services because of the categorization used, there was
6 no evidence that the designation of Petitioner's handicapping
7 condition as "mentally retarded" has any **present** adverse negative
8 impact on the program or services afforded to the child.

9 16. Mary Maloney, a child development specialist and program
10 director of the Western Montana Comprehensive Development Center,
11 testified that she had worked in the special education field for
12 18 years. Her testimony revealed that the effect of stigmatization
13 and labeling a handicapping condition generally has a profound
14 effect on children's lives and families, and that curriculum is
15 influenced by labels, not by needs. Mrs. Maloney's testimony,
16 however, did not provide direct evidence of these concerns in this
17 matter.

18 17. Robert Runkel, Special Education Director, Montana Office
19 of Public Instruction, testified regarding the State's requirements
20 of identification and labeling for federal and state funding to
21 school districts. Mr. Runkel testified that aside for the purpose
22 of Rule 10.16.1106, A.R.M., identification of a student is not to
23 be used for any decisions regarding programming or placement in
24 special education classrooms. The information is used for reports
25 such as the December 1 "child count reports" and for purposes of
periodic federal and state special education monitoring.

18. Mr. Runkel admitted that he questions whether federal reporting requirements and funding accountability justify labels on any child.

From the foregoing Findings of Fact, this Hearing Officer now draws these:

CONCLUSIONS OF LAW

1. This Hearing Officer has jurisdiction to hear and decide this matter pursuant to the Education for All Handicapped Children's Act, 20 U.S.C. Section 1400, et seq., its implementing federal regulations and the Rules of Procedure for School Controversy Contested Cases, Rule 10.6.101, et seq., Administrative Rules of Montana.

2. Both Parties waived the requirement of deciding this matter within the 45-day time limit from the date of filing this appeal.

3. Petitioner is a handicapped pupil entitled to receive special education services pursuant to the Education for All Handicapped Children's Act, 20 U.S.C Section 1400, et seq., and Title 20, Chapter 7, Part 4, Montana Codes Annotated.

4. Respondent School District is the local educational agency required to provide special education services to Petitioner.

5. From the date of filing this appeal, Petitioner has received a free appropriate public education in the least restrictive setting from Respondent School District and in compliance with state and federal law.

1 6. Respondent School District is required to designate a
2 handicapping condition or conditions for each child served by its
3 special education program. 34 C.F.R. 300.541. The written report
4 of the child study team must: " . . . include a statement of:
5 whether the child has a specific learning disability. . ." 34
6 C.F.R. 300.543; Rule 10.6.1106, Administrative Rules of Montana.

7 7. The Montana Office of Public Instruction must report by
8 disability category the pupils served by special education to
9 appropriate federal agencies. 34 C.F.R. 300.124(e).

10 8. Mental retardation is a handicapping condition recognized
11 by federal statute 20 U.S.C. 1401(a); by federal regulation 34
12 C.F.R. 300.5(a) and 34 C.F.R. 300.5(b)(4); and state statute
13 20-7-401, MCA. Special education under the EHA is an entitlement
14 program, provided the child can be properly evaluated as having one
15 or more qualifying handicapping conditions. If a child is not
16 properly classified as eligible for special education services, the
17 special education funds expended on the child may be recoverable
18 from Respondent School Board of Trustees by the Montana Office of
19 Public Instruction. 34 C.F.R. 300.141, State of Montana Special
20 Education Plan 1990-1992, Part II (A)(XI).

21 9. Respondent School District has properly diagnosed
22 Petitioner's handicapping condition as "speech impaired" and
23 "mental retardation." Such diagnosis have been used for reporting
24 purposes as permitted by Rule 10.16.1106, Administrative Rules of
25 Montana.

10. Respondent School District has not illegally revealed any

1 personally identifiable information of Petitioner and has not
2 violated the EHA, state or federal law or the Montana or Federal
3 Constitutions.

4 11. The present use of label categories on Petitioner (to the
5 date of filing this appeal) has not violated Petitioner's right of
6 privacy under the Montana or Federal Constitutions.

7 From the foregoing Findings of Fact and Conclusions of Law,
8 this Hearing Officer now enters the following:

9 ORDER

10 1. Respondent School District's identification of
11 Petitioner's handicapping condition is affirmed.

12 2. Respondent School District may not use the handicapping
13 identification or label of "mental retardation" to determine the
14 contents of Petitioner's individual education plan, or any service
15 or related services required in order to provide Petitioner with
16 a free appropriate public education in the least restrictive
17 setting. The foregoing does prohibit the use of the data
18 underlying the diagnosis in the development of an appropriate
19 individual education plan.

20 3. Any reference to the child's suspected disability is for
21 the purpose of determining that child's eligibility to receive
22 special education and related services, and not for the purpose of
23 categorically labeling the universal needs of children with similar
24 disabilities.

25 4. Respondent School District shall, at the commencement of
any future child study team or individual education plan meeting,

1 instruct all participants that the sole purpose of labeling a child
2 is for the following reasons:

3 a) Evaluating the pupil's needs for receiving special
4 education and related services.

5 b) Determining an appropriate educational program for a
6 child needing special education and related services. The
7 utility of any labeling system is to identify characteristics
8 universally shared with other children, not to identify
9 characteristics unique to each child. That any label or
10 identification shall not be used as the sole or critical
11 measure in formulating and developing the child's individual
12 education plan or that would categorize the child according
13 to his/her disability, but that the child's individual needs
14 are maintained and met.

15 c) That handicapping labels shall not be used to justify the
16 educational placement of any child, either expressly or in
17 practice, on the basis of a category, but that the placement
18 shall be determined to insure the child's right to be educated
19 with non-handicapped peers to the maximum extent appropriate
20 as is required under federal law. "Appropriate" pertains to
21 the educational needs of that individual student, individually
22 determined. Labeling or handicapping categories of children
23 shall not be the reason of segregation of the child or be used
24 as the reason for a more restrictive placement.

25 d) That the use of reporting the label to state and federal
agencies is independent from how the school district
determines the child's individual educational needs.

e) All disclosure of the category or label shall protect the
confidentiality of a student's personally identifiable
information and is not to be used for any other purpose other
than meeting the requirements of EHA-B; 34 C.F.R.
300.571(a)(2).

5. Recognizing that the issue presented in this appeal is
more appropriately addressed by the Montana Office of Public
Instruction and concluding that this Hearing Officer maintains
jurisdiction over that State educational agency (SEA) as a special
education provider, this Hearing Officer directs the Montana Office
of Public Instruction to submit a copy of this Order to the Montana
Special Education Advisory Council, with instructions to review the

1 formulation of a statement to be included in the Montana Special
2 Education Reference Manual that provides for clear guidelines on
3 the use of labels and handicapping conditions following the rules
4 announced above.

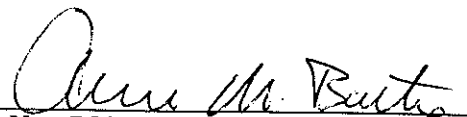
5 Further, the Montana Office of Public Instruction is directed
6 to produce and distribute to all school districts instructions on
7 the limitations of the use and disclosure of handicapping condition
8 identification labels in child study and individual education plan
9 team meetings, and distribute these instructions to school
10 districts through the Montana Special Education Reference Manual.

11 6. That this Hearing Officer retains jurisdiction in this
12 matter with instructions for Petitioner to refile an appeal with
13 the Montana Office of Public Instruction, if and when Petitioner
14 determines that Respondent School District or any local educational
15 agency or State educational agency has denied Petitioner a free
16 appropriate public education in the least restrictive environment
17 in the use of handicapping condition identification labels.

18 7. Those Proposed Findings of Fact and Conclusions of Law
19 not otherwise adopted herein have been considered and are hereby
20 rejected.

21 IT IS SO ORDERED.

22 DONE AND DATED this 30th day of June, 1990.

23
24 
25 ANNIE M. BARTOS
Hearing Officer

CERTIFICATE OF SERVICE

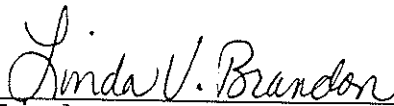
THIS IS TO CERTIFY that on this 9th day of July, 1990, a true and exact copy of the foregoing Findings of Fact, Conclusions of Law and Order, postage prepaid, to:

Kathleen M. Snyder
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Jack Rudio, Director
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Linda V. Brandon
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Office of Public Instruction

In the Matter of S.S., OSPI 90-03, decided June 30, 1990.

The decision of S.S. is a big victory for S.S. and all special education children in the state.

S.S. was not denied an appropriate education by the "mental retardation" label, which his mother admitted, and the use of such label as a handicapping condition identification did not violate the EAHCA nor S.S.'s constitutional right to privacy.

What the decision does is provide that school districts develop an IEP around the label based on the individual's needs for curriculum, special education and related services; not curriculum around the label. At present, the use of the label as a handicapping condition identifier has no adverse negative impact on the program or services afforded to the child, however, the hearing officer is retaining jurisdiction for when, and if, the use of the label denies S.S. a FAPE in the LRE.

Further, OPI is directed to produce and distribute to all school districts instructions on the limitations of the use and disclosure of handicapping condition identification labels in CST and IEP team meetings, to ensure that the child's needs are maintained and met and that the child is educated with non-handicapped peers to the maximum appropriate as is required under Federal law.